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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/828,699

04/21/2004

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EXAMINER

GILBERT, ANDREW M

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

01/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/828,699	Applicant(s) CHEVES ET AL.	
	Examiner Andrew M. Gilbert	Art Unit 3767	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 4, 7, 15 and 18.
- Claim(s) withdrawn from consideration: 25.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

KEVIN C. SIRMONS
 SUPERVISORY PATENT EXAMINER

Kevin C. Sirmons

Andrew Gilbert
 Andrew Gilbert
 1/16/2007

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments do not overcome the prior art of record. In reference to claims 4 and 15, the Examiner notes that the longitudinally expandable members (76) of Grayzel are fully capable of acting as the one or more cutting member of the Applicant's invention because the members are coupled to the balloon by projections (72, col 8, lns 24-28, 44-63, and col 9, lns 3-9). Furthermore, the Examiner notes that the claim limitation of "series of undulations... wherein the undulations curve from side to side" is sufficiently broad to read on Figs 7D, 7F where the projections forming the cutting members have side-to-side curves forming undulations (see Fig 7D, 7F and col 9, lns 57-col 10, ln 8). The Examiner notes that the Applicant has not recited specific structure to further define the undulations. Thus, the rejection of claims 4 and 15 is maintained.

Secondly, in reference to claims 7 and 18, the Examiner notes that the cutting member being "coupled to the balloon" does not require that the cutting member is separate and distinct from the balloon. The Examiner asserts that "coupled to" is a very broad limitation that can at least include the cutting member being attached to and part of the balloon structure. It is clear that the cutting members (30) are attached to the balloon and are thus coupled to the balloon. Additionally, the Examiner notes that the Applicant has not provided sufficient structure to further define the helical region/twist of the cutting member. It is apparent from Figs 1, 2, and 4 that the traction region as a whole structure is formed in a helical fashion even with gaps (26) separating the cutting members (30). The Examiner also references the Applicant's specification (see pg 12, lns 11-19) where the Applicant notes that the helical region/twist may be defined by a series of peaks, ridges and may be continuous, intermittent, have a regular or irregular pitch or be configured in any suitable manner. The Examiner notes that Bradshaw clearly discloses a helical region having a series of peaks (30) with an pitch (34). Thus, the rejection is maintained.

AG

1/16/2007
